

ORIGINAL
FILED
07 MAR 19 PM 3:00
CLERK OF U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Amanda L. Groves (SBN: 187216)
WINSTON & STRAWN LLP
101 California Street
San Francisco, CA 94111-5894
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E-Filing

Attorneys for Defendant
CAPGEMINI U.S. LLC F/K/A CAP GEMINI ERNST & YOUNG U.S. LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PJH

PACIFIC HEALTH ADVANTAGE dba PAC
ADVANTAGE,

Plaintiff,

vs.

CAP GEMINI ERNST & YOUNG U.S. LLC,

Defendant.

Case No.

NOTICE OF REMOVAL OF CIVIL
ACTION TO UNITED STATES DISTRICT
COURT ON BEHALF OF DEFENDANT
CAPGEMINI U.S. LLC

COPY

Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5894

1 Defendant Capgemini U.S. LLC f/k/a Cap Gemini Ernst & Young U.S. LLC ("Capgemini"
2 or "Defendant"), by its undersigned attorneys, Winston & Strawn LLP, hereby states as follows in
3 support of removal pursuant to 28 U.S.C. § 1441, *et seq.*:

4 **BACKGROUND**

5 1. On or about November 14, 2006, plaintiff Pacific Health Advantage dba Pac
6 Advantage ("Pac Advantage" or "Plaintiff") filed a complaint (the "Complaint") in the Superior
7 Court of California, County of San Francisco, bearing Docket Number CGC-06-457879.

8 2. Plaintiff delivered a copy of the Complaint to Capgemini by service of same on
9 February 20, 2007. This action is a civil action over which this Court has original jurisdiction
10 pursuant to 28 U.S.C. § 1332, and is one which may be removed to this court by Capgemini pursuant
11 to 28 U.S.C. § 1441, because this is a civil action where the matter in controversy exceeds the sum
12 or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

13 **COMPLETE DIVERSITY EXISTS BETWEEN THE PARTIES**

14 3. Complete diversity existed at the time that this action was filed and still exists.
15 Defendant is informed and believes, and thereon alleges, that Plaintiff was, at the time of the filing
16 of this action, and still is a California corporation.

17 4. Defendant Capgemini is a limited liability company organized and existing under the
18 laws of the State of Delaware, with its principal place of business located at 750 Seventh Avenue,
19 New York, NY 10019. Its members are Capgemini America Inc., a corporation organized and
20 existing under the laws of the State of New Jersey, with its principal place of business located at 750
21 Seventh Avenue, New York, NY 10019, and Capgemini Holding Inc., a corporation organized and
22 existing under the laws of the State of Delaware, with its principal place of business located at 750
23 Seventh Avenue, New York, NY 10019. Capgemini is not a citizen of the State of California.

24 5. Hence, this action is between citizens of different states.

25 **THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED**

26 6. Plaintiff's complaint seeks damages of "\$750,000+," and also seeks an additional
27 sums of interest and attorney fees according to proof. (Complaint, ¶10.)

28 //

REMOVAL IS PROPER

7. Capgemini has complied with all requirements for removal under 28 U.S.C. § 1446. As set forth above, Capgemini received a copy of the complaint on February 20, 2007. This notice is being filed with the Court within 30 days of that date. Capgemini also attaches hereto as Exhibit A a copy of all process, pleadings and orders served upon Capgemini in the action.

8. Written notice of the filing of this notice of removal will promptly be served on the attorneys for Plaintiff, and a copy will promptly be filed with the Clerk of the Superior Court of California, County of San Francisco.

9. This case is removed subject to and without waiver of any challenges which Capgemini may have to personal jurisdiction, proper venue, or any other claims or defenses that may be available to Capgemini.

10. Capgemini reserves the right to amend or supplement this notice of removal.

WHEREFORE, Defendant Capgemini requests that the above-captioned action be removed from the Superior Court of the State of California, County of San Francisco, to the United States District Court for the Northern District of California.

Dated: March 19, 2007

WINSTON & STRAWN LLP


By: 
Amanda L. Groves
Attorneys for Defendant
CAPGEMINI U.S. LLC.

EXHIBIT A

SUMMONS ON COMPLAINT
(CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

CAP GEMINI ERNST & YOUNG and DOES 1 to 10

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

PACIFIC HEALTH ADVANTAGE dba PAC ADVANTAGE

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
400 McAllister Street, Room 103
San Francisco, CA 94102-4514

CASE NUMBER:
(Número del Caso):

CGC-06-457879

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Monica Cruz Thornton/Jennifer J. Capabianco (310) 445-0800 (310) 473-2525
SELMAN BREITMAN LLP
33 Montgomery, Sixth Floor
San Francisco, CA 94105-4537

DATE:

(Fecha) NOV 14 2006

Gordon Park-Li

Clerk, by

Deborah Steppe

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

[SEAL]

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

Cap Gemini Ernst & Young

under:

☒ CCP 416.10 (corporation)☐ CCP 416.20 (defunct corporation)☐ CCP 416.40 (association or partnership)☐ other (specify):☐ CCP 416.60 (minor)☐ CCP 416.70 (conservatee)☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

Page 1 of 1

**SUMMONS ON COMPLAINT
(CITACION JUDICIAL)**

SUM-100

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

CAP GEMINI ERNST & YOUNG and DOES 1 to 10

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

PACIFIC HEALTH ADVANTAGE dba PAC ADVANTAGE

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
400 McAllister Street, Room 103
San Francisco, CA 94102-4514

CASE NUMBER:
(Número del caso):

CGC-06-457879

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Monica Cruz Thornton/Jennifer J. Capabianco (310) 445-0800 (310) 473-2525

SELMAN BREITMAN LLP
33 Montgomery, Sixth Floor
San Francisco, CA 94105-4537

DATE:

(Fecha) NOV 14 2006

Gordon Park-Li

Clerk, by

(Secretario)

Deborah Steppe

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

Page 1 of 1

982.1(20)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Monica Cruz Thornton (SBN 131446) Jennifer J. Capabianco (193371) SELMAN BREITMAN LLP 33 New Montgomery, Sixth Floor San Francisco, CA 94105-4537 TELEPHONE NO: (310) 445-0800 FAX NO. (Optional): (310) 473-2525 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY ENDORSED FILED San Francisco County Superior Court NOV 14 2006 GORDON PARK-LI, Clerk BY: DEBORAH STEPPE Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street, Room 103 MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102-4514 BRANCH NAME:	CASE MANAGEMENT CONFERENCE SET APR 13 2007 - 9:00 AM
PLAINTIFF: PACIFIC HEALTH ADVANTAGE dba PAC ADVANTAGE DEFENDANT: CAP GEMINI ERNST & YOUNG <input checked="" type="checkbox"/> DOES 1 TO 10	DEPARTMENT 212 CASE NUMBER:
CONTRACT <input checked="" type="checkbox"/> COMPLAINT <input type="checkbox"/> AMENDED COMPLAINT (Number): <input type="checkbox"/> CROSS-COMPLAINT <input type="checkbox"/> AMENDED CROSS-COMPLAINT (Number):	CCGC-06-457879
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint or cross-complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited	DEPARTMENT 212 CASE NUMBER:

1. Plaintiff* (name or names): PACIFIC HEALTH ADVANTAGE dba PAC ADVANTAGE

alleges causes of action against defendant* (name or names): CAP GEMINI ERNST & YOUNG

2. This pleading, including attachments and exhibits, consists of the following number of pages: 7

3. a. Each plaintiff named above is a competent adult

☐ except plaintiff (name):

- (1) ☒ a corporation qualified to do business in California
 (2) ☐ an unincorporated entity (describe):
 (3) ☐ other (specify):

b. ☐ Plaintiff (name):a. ☐ has complied with the fictitious business name laws and is doing business under the fictitious name (specify):b. ☐ has complied with all licensing requirements as a licensed (specify):c. ☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3c.

4. a. Each defendant named above is a natural person

☐ except defendant (name):☐ except defendant (name):

- (1) ☒ a business organization, form unknown
 (2) ☐ a corporation
 (3) ☐ an unincorporated entity (describe):
 (4) ☐ a public entity (describe):
 (5) ☐ other (specify):

- (1) ☐ a business organization, form unknown
 (2) ☐ a corporation
 (3) ☐ an unincorporated entity (describe):
 (4) ☐ a public entity (describe):
 (5) ☐ other (specify):

FAXEI

Page 1 of 2

* If this form is used as a cross-complaint, plaintiff means cross-complainant and defendant means cross-defendant.

 Form Approved for Optional Use
 Judicial Council of California
 982.1(20) (Rev. January 1, 2006)

COMPLAINT—Contract

Legal
Solutions
& Plus

Code of Civil Procedure, § 425.12

982.1(20)

SHORT TITLE: Pac Advantage v. Cap Gemini

CASE NUMBER:

4. (Continued)

b. The true names of defendants sued as Does are unknown to plaintiff.

(1) ☒ Doe defendants (specify Doe numbers): 1-10 were the agents or employees of the named defendants and acted within the scope of that agency or employment.(2) ☐ Doe defendants (specify Doe numbers): _____ are persons whose capacities are unknown to plaintiff.c. ☐ Information about additional defendants who are not natural persons is contained in Attachment 4c.d. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names): _____5. ☐ Plaintiff is required to comply with a claims statute, anda. ☐ has complied with applicable claims statutes, orb. ☐ is excused from complying because (specify): _____6. ☐ This action is subject to ☐ Civil Code section 1812.10 ☐ Civil Code section 2984.4.

7. This court is the proper court because

a. ☒ a defendant entered into the contract here.b. ☐ a defendant lived here when the contract was entered into.c. ☐ a defendant lives here now.d. ☐ the contract was to be performed here.e. ☐ a defendant is a corporation or unincorporated association and its principal place of business is here.f. ☐ real property that is the subject of this action is located here.g. ☐ other (specify): _____

8. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

☒ Breach of Contract☐ Common Counts☒ Other (specify): Fraud, Negligent Misrepresentation, Negligence.9. ☐ Other allegations: _____

10. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

a. ☒ damages of: \$ \$750,000 plusb. ☒ interest on the damages(1) ☒ according to proof(2) ☐ at the rate of (specify): _____

percent per year from (date): _____

c. ☒ attorney fees(1) ☐ of: \$ _____(2) ☒ according to proof.d. ☐ other (specify): _____11. ☐ The paragraphs of this pleading alleged on information and belief are as follows (specify paragraph numbers): _____

Date: November 14, 2006

Monica Cruz Thornton (SBN 131446)

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(If you wish to verify this pleading, affix a verification.)

SHORT TITLE: Pac Advantage v. Cap Gemini	CASE NUMBER:
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FIRST

CAUSE OF ACTION - Breach of Contract

Page 3

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

BC-1. Plaintiff (name): PAC ADVANTAGE

alleges that on or about (date):

a ☒ written ☐ oral ☐ other (specify):

agreement was made between (name parties to agreement): Plaintiff and Cap Gemini Ernst & Young

☐ A copy of the agreement is attached as Exhibit A, or☒ The essential terms of the agreement ☐ are stated in Attachment BC-1 ☒ are as follows (specify):

On or about December 19, 2002 PacAdvantage entered into a written contract with defendant. The contract was entered into in San Francisco, CA. Pursuant to that contract defendant was to provide software implementation services to plaintiff. Plaintiff agreed to and did pay defendant monetary compensation for these services pursuant to the contract.

PacAdvantage has performed all conditions, covenants and promises required in accordance with the terms and conditions of the contract.

Defendant breached the above-referenced contract by failing to perform the acts required of it to satisfy the contract, specifically by failing to provide the services required of it under the contract. [SEE BC-6 BELOW]

BC-2. On or about (date):

defendant breached the agreement by ☐ the acts specified in Attachment BC-2 ☐ the following acts (specify):

BC-3. Plaintiff has performed all obligations to defendant except those obligations plaintiff was prevented or excused from performing.

BC-4. Plaintiff suffered damages legally (proximately) caused by defendant's breach of the agreement

☒ as stated in Attachment BC-4 ☐ as follows (specify):

As stated above.

BC-5. ☒ Plaintiff is entitled to attorney fees by an agreement or a statute

☐ of \$

☒ according to proof.

BC-6. ☒ Other: ATTACHMENT TO BC-1 (continued)

As a result of defendant's breach of the above contract, plaintiff has been damaged in an amount that is not yet certain but which is not less from \$750,000. Plaintiff will seek leave of court to amend the complaint to reflect the amount of such damages when the amount of such damages is more specifically ascertained.

SHORT TITLE: Pac Advantage v. Cap Gemini	CASE NUMBER:
--	--------------

SECOND

(number)

CAUSE OF ACTION - Fraud

Page 4

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

FR-1. Plaintiff (name): PAC ADVANTAGE

alleges that defendant (name): CAP GEMINI ERNST & YOUNG

on or about (date): In and about 12/19/02 and on defrauded plaintiff as follows:

FR-2. ☒ Intentional or Negligent Misrepresentation

a. Defendant made representations of material fact ☐ as stated in Attachment FR-2.a ☒ as follows:
Commencing on or about 12/19/02 and thereafter, defendant through its principals and agents represented that it would provide software implementation management services, provide project management services, remediation and testing of the PX2 System.

b. These representations were in fact false. The truth was ☐ as stated in Attachment FR-2.b ☒ as follows:
Defendants in fact did not provide the services noted hereinabove, failed to provide appropriate project management services, remediation and testing as represented and failed to disclose same.

c. When defendant made the representations,

☒ defendant knew they were false, or☒ defendant had no reasonable ground for believing the representations were true.

d. Defendant made the representations with the intent to defraud and induce plaintiff to act as described in item FR-5. At the time plaintiff acted, plaintiff did not know the representations were false and believed they were true. Plaintiff acted in justifiable reliance upon the truth of the representations.

FR-3. ☒ Concealmenta. Defendant concealed or suppressed material facts ☐ as stated in Attachment FR-3.a ☒ as follows:

Defendants in fact did not provide the services noted hereinabove, failed to provide appropriate project management services, remediation and testing as represented and failed to disclose same.

b. Defendant concealed or suppressed material facts

☐ defendant was bound to disclose.☐ by telling plaintiff other facts to mislead plaintiff and prevent plaintiff from discovering the concealed or suppressed facts.

c. Defendant concealed or suppressed these facts with the intent to defraud and induce plaintiff to act as described in item FR-5. At the time plaintiff acted, plaintiff was unaware of the concealed or suppressed facts and would not have taken the action if plaintiff had known the facts.

(Continued)

11/14/2006 12:36 FAX

05/19/2007

SHORT TITLE: Pac Advantage v. Cap Gemini

CASE NUMBER:

SECOND

(number)

CAUSE OF ACTION - Fraud (Continued)

Page 5

FR-4. ☐ Promise Without Intent to Perform

- a. Defendant made a promise about a material matter without any intention of performing it ☐ as stated in Attachment FR-4.a ☐ as follows:

- b. Defendant's promise without any intention of performance was made with the intent to defraud and induce plaintiff to rely upon it and to act as described in item FR-5. At the time plaintiff acted, plaintiff was unaware of defendant's intention not to perform the promise. Plaintiff acted in justifiable reliance upon the promise.

FR-5. In justifiable reliance upon defendant's conduct, plaintiff was induced to act ☐ as stated in Attachment FR-5

☒ as follows: Plaintiffs were induced to and did rely on defendant's representations that project management services including remediation and testing of PX2 would be provided.

FR-6. Because of plaintiff's reliance upon defendant's conduct, plaintiff has been damaged ☐ as stated in Attachment FR-6 ☒ as follows: Plaintiff incurred the claims of several healthcare providers for reimbursement of expenditures which were erroneously incurred due to defendant's aforementioned representations .

FR-7. Other:

11/14/2008 12:00 PM

11/14/2008 12:00 PM

ATTACHMENT

CASE NO. _____

SHORT TITLE: PAC ADVANTAGE V. CAP GEMINI

FR-8:

THIRD CAUSE OF ACTION-BREACH OF FIDUCIARY DUTY

(Against Defendant CAP GEMINI ERNST & YOUNG and DOES 1 to 10.)

Plaintiff PAC ADVANTAGE alleges that Defendant CAP GEMINI ERNST & YOUNG ("CAP GEMINI") were retained by plaintiff for consultation and services for software implementation management of a system known as PX2. As such, defendants owed plaintiff a fiduciary duty to perform the services, disclose all material facts and provide software implementation management services in connection with the PX2 System. Defendant breached its fiduciary duty to plaintiff when it failed to properly perform the management services, remediation and testing as a representative would do and failed to disclose same. Pac Advantage relied upon defendant and defendant's expertise in this relationship for implementation of the software management of PX2 including testing thereof. It was not until November of 2003 and thereafter that Pac Advantage learned of defendant CAP GEMINI's failure to properly implement the PX2 System, testing and remediation for which it was retained and upon which PAC ADVANTAGE relied on defendant to perform. Further, defendant failed to and did not disclose its failure to properly implement management, remediation and testing of the PC2 System.

As a result of the defendant's breach of fiduciary duties plaintiff PAC ADVANTAGE has been damaged in the amount of at least \$750,000 based upon claims from third party providers, and subject to proof.

SHORT TITLE: PAC ADVANTAGE V. CAP GEMINI ERNST & YOUNG	CASE NUMBER:
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FOURTH

(number)

CAUSE OF ACTION - General Negligence

Page 7

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): PAC ADVANTAGE

alleges that defendant (name): CAP GEMINI ERNST & YOUNG

☒ Does 1 to 10

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff

on (date): Date of contract

at (place): And Continuing location of performance of services, San Francisco, CA

(description of reasons for liability):

Defendant negligently failed to perform professional services, failed to disclose failure to perform, performance fell below the standard of care thereby being the proximate cause of damages to Pac Advantage. Plaintiff did not incur actual damages until after discovery of defendant's negligence and actual damages until on or about August of 2006 and subject to proof.

11/14/2006 12:39 FAX

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Monica Cruz Thornton (SBN 131446) Jennifer J. Capabianco (SBN 193371) 33 New Montgomery, Sixth Floor San Francisco, CA 94105-4537 TELEPHONE NO.: (310) 445-0800 FAX NO.: (310) 473-2525 ATTORNEY FOR (Name): Plaintiff		FOR COURT USE ONLY ENDORSED FILED San Francisco County Superior Court NOV 14 2006 GORDON PARK-LI, Clerk BY: <u>DEBORAH STEPPE</u> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street, Room 103 MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102-4514 BRANCH NAME: Main		
CASE NAME: PACIFIC ADVANTAGE dba PACIFIC ADVANTAGE V. CAP GEMINI ERNST & YOUNG CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		CASE NUMBER: CGC-06-457879 JUDGE: DEPT:
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)		

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DPD/WD (23) Non-P/DPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DPD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <i>SW</i> <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input checked="" type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Type of remedies sought (check all that apply):
 a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): Breach of Contract, Fraud, Breach of Fiduciary Duties
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015).

Date: November 14, 2006

Monica Cruz Thornton (SBN 131446)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

 Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. January 1, 2006)

CIVIL CASE COVER SHEET

 Legal
 Solutions
 & Plus

 Cal. Rules of Court, rules 201.8, 1800-1812;
 Standards of Judicial Administration, § 19

FAXED

11/15/2000 12:00 PM

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**To Plaintiffs and Others Filing First Papers**

If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 5 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. You do not need to submit a cover sheet with amended papers. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 201.8(c) and 227 of the California Rules of Court.

To Parties in Complex Cases

In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 1800 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

Auto (22)-Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach—Seller
Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential.)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rule 1800-1812)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint RICO (27)

Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

CASE NUMBER: CGC-06-457879 PACIFIC HEALTH ADVANTAGE DBA PAC ADVANTAGE VS

NOTICE TO PLAINTIFF

A Case Management Conference is set for

DATE: APR-13-2007

TIME: 9:00AM

**PLACE: Department 212
400 McAllister Street
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 212 (g)(1) requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 212 twenty-five (25) days before the case management

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL.
(SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

See Local Rules 3.6, 6.0 C and 10 D re stipulation to commissioners acting as temporary judges